



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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Monthly Newsletter

**FROM THE CHIEF EDITOR'S PEN**

**“Unless you try to do something beyond what you have already mastered, you will never grow.”**

**– Ronald E. Osborn**

It gives us immense pleasure to share our 42<sup>nd</sup> Edition of “WINS – e-newsletter” for September ,2020. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor’s Quick Take.

In this issue we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
  - Interpretation of Statute With Its Intention
  - Relevant Provisions of Company ( Amendment ) Act 2020
  - TCS Applicability w.e.f.1st October, 2020
3. Compliance checklist for the month of October 2020.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback are valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at [vinayshukla@whitespan.in](mailto:vinayshukla@whitespan.in)

with Warm Regards

**WINS (Whitespan Information and News Services)**

**September 30, 2020**

## **OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

1. **Mr. Vinay Shukla** - Mr. Vinay Shukla, a Fellow Member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management is Co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
1. **Ms. Jaya Yadav** - Ms. Jaya Yadav, a practicing company secretary based at Gurgaon is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce from Delhi University.
2. **Mr. Himanshu Gupta** - Mr. Himanshu Gupta is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce.
3. **Ms. Trishna Choudhary** - Ms. Trishna Choudhary is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in commerce from Delhi University.
4. **Ms. Divya Shukla**- Ms Divya Shukla is graduate in Law and Commerce from Christ University, Bengaluru.

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# Ministry of Corporate Affairs (MCA)

## 1. The Companies (Acceptance of Deposits) Amendment Rules, 2020

**Date of notification: September 07, 2020**

**Effective date: Date of publication in the official gazette**

**Link: [http://www.mca.gov.in/Ministry/pdf/Rule\\_08092020.pdf](http://www.mca.gov.in/Ministry/pdf/Rule_08092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 07, 2020 notified the Companies (Acceptance of Deposits) Amendment Rules, 2020, making following amendment to the Companies (Acceptance of Deposits) Rules, 2014:

- i. Rule 2(1)(c)(xvii)** - A start-up company is allowed to receive an amount of twenty-five lakh rupees or more, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person.
- ii. Rule 3** - Terms and Conditions of Acceptance of Deposits by Companies - Maximum limit in respect of deposits to be accepted from members shall not apply to private companies which are a start-up, for ten years from the date of its incorporation.

The period of 10 years was 5 years prior to the amendment.

**“Start-up company”** means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognized as such in accordance with notification number [G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.

## **2. Extension of Date of the Annual General Meeting (AGM) for the Financial Year 2019-2020**

**Link:** <http://www.mca.gov.in/MinistryV2/extensionofagm.html>

In terms of the power vested under the third proviso to sub-section (1) of Section 96 of the Act, the Registrar of Companies have extended the time to hold AGM, other than the first AGM, for the financial year ended on March 31, 2020, for Companies falling within their respective jurisdiction by a period of three months from the due date by which the AGM ought to have been held i.e. September 30, 2020.

It was further clarified that the extension granted shall also cover the pending applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on 31.03.2020, which are yet to be approved. Further, the applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on March 31, 2020, which were rejected, where the approval for the extension of AGM up to 3 months from the due date of the AGM shall be deemed to have been granted without any further action on the part of the Company.

### **3. Notification under section 10A of Insolvency and Bankruptcy Code, 2016**

**Date of notification : September 24, 2020**

**Effective Date : September 24, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/Notification\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_25092020.pdf)**

MCA vide its notification dated September 24, 2020 has notified the Insolvency and Bankruptcy Code, (Second Amendment) Act, 2020.

From now on no application for initiation of Corporate Insolvency Resolution Process of a corporate debtor shall be filed, for any default arising on or after March 25, 2020 for a period of 6 months or such further period, not exceeding 1 year from such date as may be notified in this behalf.

Through this Amendment, the Central Government has notified a further period of three months from the September 25, 2020, for the purposes of the said section. This means that no insolvency proceedings can be initiated against any borrower for defaults arising on or after March 25, 2020, until such time that the IBC remains suspended. Further, no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a corporate debtor for the said default occurring during the said period.



#### **4. The Insolvency and Bankruptcy (Application to Adjudicating Authority) (Amendment) Rules, 2020**

**Date of Notification : September 24, 2020**

**Effective date : September 24, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules_25092020.pdf)**

MCA vide its notification dated September 24, 2020 has notified the Insolvency and Bankruptcy (Application to Adjudicating Authority) (Amendment) Rules, 2020 to further, amend the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

Amendments are carried out in Rule 4(3) & Rule 6(2) on service of a copy of the application by the Financial Creditor and Operational Creditors shall be substituted to add electronic means as one of the ways to serve the copy of the application. Further in Form 1 on particulars of financial debt, Form 2 on written communication by proposed interim resolution professional, Form 5 on application by the operational creditor and Form 6 on application by the corporate applicant under Part V of the Rules have been substituted as per the guidelines. Accordingly in Form 5A on date of credit and amount of credit has been inserted.

**5. Relaxation of additional fees and extension of last date of filling of CRA-4 (Form for filling of cost audit report) for FY 2019-20 UNDER THE Companies Act, 2013**

**Date of notification: September 10, 2020**

**Effective date: September 10, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/circular\\_10092020.pdf](http://www.mca.gov.in/Ministry/pdf/circular_10092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 10, 2020 has extended the last date of filling of form CRA-4 (Form for filling of cost audit report) for the FY 2019-20.

The cost auditor may now submit the cost audit report for the FY 2019-2020 with the Board of Directors of the respective Company by November 30, 2020 and thereafter same may be filed by the Company in form CRA 4 within 30 days from the date of the said report.

The Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013.

## **6. Extension of Companies Fresh Start Scheme ,2020**

**Date of Notification : September 28,2020**

**Effective Date :September 28, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30_28092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 28, 2020 has extended the Timeline for Companies Fresh start Scheme till 31<sup>st</sup> December 2020. all other requirements provided in the circularNo.12/2020 dated 30.03.2020 shall remain unchanged ([http://www.mca.gov.in/Ministry/pdf/Circular12\\_30032020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf)).

## **7.Extension of LLP Settlement Scheme ,2020**

**Date of Notification : September 28,2020**

**Effective Date :September 28, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.31\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.31_28092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 28, 2020 has extended the timeline for LLP Settlement Scheme till 31<sup>st</sup> December 2020. all other requirements provided in the circularNo.13/2020 dated 30.03.2020 shall remain unchanged ([http://www.mca.gov.in/Ministry/pdf/Circular13\\_30032020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular13_30032020.pdf)).

## **8. Extension Of Time –Scheme For Relaxation Of Time For Filing Forms Related To Creation Or Modification Of Charges Under The Companies Act 2013**

**Date of Notification : September 28,2020**

**Effective Date :September 28, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.32\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.32_28092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 28, 2020 has extended the timeline for filing forms related to creation or modification of charges under the Companies Act 2013 till December 31, 2020.

## **9. Clarification On Passing Of Ordinary And Special Resolutions By Companies Under The Companies Act,2013 Read With Rules Made There Under On Account Of Covid-19- Extension Of Time**

**Date of Notification : September 28,2020**

**Effective Date :September 28, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.33\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.33_28092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 28, 2020 has allowed companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided by the MCA upto December 31, 2020.

## 10. COMPANIES(AMENDMENT) ACT 2020

**Date of Notification : September 28,2020**

**Effective Date :September 28, 2020**

**Link: [http://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)**

Ministry of Corporate Affairs vide its notification dated September 28, 2020 has notified the Companies (Amendment) Act 2020. Few key highlights of the amendment are as follow :

- 1. Periodical Financial Results :-** Now such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.
- 2. Remuneration to Non-Executive Director and Independent Director in case of loss or inadequate profit :-** Non-executive directors of a Company having no profits or inadequate profits, may get remuneration, exclusive of the sitting fee, in accordance with the provisions of Schedule V of the Companies Act, 2013.
- 3. Related Party Transactions :-** Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—
  - (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and
  - (ii) In case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

# **Securities Exchange Board of India (SEBI)**

## **1. RE-LODGEMENT OF SHARE TRANSFER REQUESTS**

**Date of Circular : September 07, 2020**

**Effective Date : March 31,2020**

**Link: <https://www.sebi.gov.in/legal/circulars/sep-2020/re-lodgement-of-transfer-requests-shares-47500.html>**

SEBI vide its circular dated September 07, 2020 has fixed March 31, 2021, as the cut-off date for re-lodgement of share transfer requests. Transfer of securities held in physical mode has been discontinued with effect from April 1, 2019, However, the investors have not been barred from holding shares in the physical form.

SEBI, in March 2019, had clarified that transfer deeds lodged before the deadline of April 1, 2019, and rejected or returned due to deficiency in the documents may be re-lodged. Further, the shares that are re-lodged for transfer (including those requests that are pending with the listed company / RTA, as on date) shall henceforth be issued only in Demat mode.

S.No	Company	Section/Rule	Explanation	Remark
1.	Private Company	Section 56 of the Companies Act, 2013	An instrument of transfer of securities held in physical form shall be in <a href="#">Form No.SH.4</a> and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.	Transfer of shares can be done in physical form by executing form SH-4.
2.	Unlisted Public Company	According to Companies (Prospectus and allotment of securities) Third Amendment Rules, 2018: Rule 9A Issue of securities in dematerialised form by unlisted company: -	<p>3) Every holder of securities of an unlisted public company,</p> <p>(a) who intends to transfer such securities on or after 2<sup>nd</sup> October 2018, shall get such securities dematerialised before the transfer; or</p> <p>(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2<sup>nd</sup> October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription</p>	Transfer in Demat form is mandatory
3.	Listed Company	Regulation 40 (1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015,	<p>Provided that, except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.</p>	<p>With effect from 1<sup>st</sup> April 2019 Transfer of shares in Demat form is mandatory.</p> <p>As per circular dated 7<sup>th</sup> September 2020 transfer deeds lodged prior to deadline of April 01, 2019 and rejected / returned due to deficiency in the documents may be re-lodged on/before 31<sup>st</sup> March 2021 with requisite documents.</p> <p>The shares re-lodged for transfer and the transfer application pending with listed companies will be issued only in demat mode.</p>



## **2. AUTOMATION OF CONTINUAL DISCLOSURES UNDER REGULATION 7(2) OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015**

**Date of Circular : September 09, 2020**

**Effective Date: October 01, 2020**

**Link:** <https://www.sebi.gov.in/legal/circulars/sep-2020/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-47523.html>

SEBI vide its circular dated September 09, 2020 has automated the Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 by implementing the system-driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of the company (hereinafter collectively referred to as entities) under Regulation 7(2) of PIT Regulations.

The system-driven disclosures shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by the entities.

The procedure for implementation of the system-driven disclosures is separately provided on the circular.

The system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till March 31, 2021.

### **3. ENTITIES PERMITTED TO UNDERTAKE E-KYC AADHAAR AUTHENTICATION SERVICE OF UIDAI IN SECURITIES MARKET – ADDITION OF NSE TO THE LIST**

**Date of Circular : September 08,2020**

**Effective Date: September 08,2020**

**Link: <https://www.sebi.gov.in/legal/circulars/sep-2020/entities-permitted-to-undertake-e-kyc-aadhaar-authentication-service-of-uidai-in-securities-market-addition-of-nse-to-the-list-47502.html>**

SEBI vide its Circular dated September 08,2020 has undertaken Aadhaar authentication service of the UIDAI under section 11A of the Prevention of Money-laundering Act, 2002.

SEBI in May had come out with a list of eight entities permitted to use e-KYC (Electronic-Know Your Customer) Aadhaar authentication. The Central Depository Services (India) Ltd (CDSL), National Securities Depository Ltd (NSDL), BSE, CDSL Ventures, NSDL Database Management, NSE Data, and Analytics, CAMS Investor Services and Computer Age Management Services were the eight entities that were allowed to use e-KYC Aadhaar authentication.

Government of India, Department of Revenue (DoR), vide Gazette Notification No. G.S.R. 516(E) dated August 20, 2020, notified “National Stock Exchange of India Limited” (NSE) as per the recommendation by Unique Identification Authority of India (UIDAI) and SEBI to undertake Aadhaar authentication service of the UIDAI under section 11A of the Prevention of Money-laundering Act, 2002.

In view of the same, National Stock Exchange of India Limited shall undertake Aadhaar Authentication service of the UIDAI subject to compliance of the conditions as laid down in this regard

#### **4. RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS AND REVISION IN ISSUE SIZE**

**Date of Circular : September 29, 2020**

**Effective Date :October 01, 2020**

**Link: <https://www.sebi.gov.in/legal/circulars/sep-2020/relaxation-with-respect-to-validity-of-sebi-observations-and-revision-in-issue-size-47719.html>**

SEBI vide its Circular SEBI Circular no. SEBI/HO/CFD/DIL1/CIR/P/2020/66 dated April 21, 2020 had given certain relaxations wrt validity of SEBI observations and filling of fresh offer document in case of increase or decrease of size beyond a particular threshold. Revision in issue size upto 50% in accordance with the said circular shall continue till March 31, 2021.

Secondly, the validity of the SEBI observations expiring between October 1, 2020 and March 31, 2021 shall be extended upto March 31, 2021, subject to an undertaking from lead manager to the issuer confirming compliance with Schedule XVI of the ICDR Regulations, 2018 while submitting the updated offer document to the Boards.

## **5. RECOVERY OF ASSETS OF DEFAULTER MEMBER AND RECOVERY OF FUNDS FROM DEBIT BALANCE CLIENTS OF DEFAULTER MEMBER FOR MEETING THE OBLIGATIONS OF CLIENTS / STOCK EXCHANGE / CLEARING CORPORATION**

**Date of Circular : September 28, 2020**

**Effective Date :September 28, 2020**

**Link: <https://www.sebi.gov.in/legal/circulars/sep-2020/recovery-of-assets-of-defaulter-member-and-recovery-of-funds-from-debit-balance-clients-of-defaulter-member-for-meeting-the-obligations-of-clients-stock-exchange-clearing-corporation-47695.html>**

SEBI vide its Circular dated September 28,2020 has announced that in certain cases where there is shortfall of funds/securities with defaulter member to meet the obligation of clients/ SE / CC. The bye-laws of SE/CC provide for the procedure for declaring a member as defaulter when , amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.

The SE/CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients(to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law

## **6. RECOVERY OF ASSETS OF DEFAULTER MEMBER AND RECOVERY OF FUNDS FROM DEBIT BALANCE CLIENTS OF DEFAULTER MEMBER FOR MEETING THE OBLIGATIONS OF CLIENTS / STOCK EXCHANGE / CLEARING CORPORATION**

**Date of Circular : September 28, 2020**

**Effective Date :September 28, 2020**

**Link:** [https://www.sebi.gov.in/legal/circulars/sep-2020/recovery-of-assets-of-defaulter-member-and-recovery-of-funds-from-debit-balance-clients-of-defaulter-member-for-meeting-the-obligations-of-clients-stock-exchange-clearing-corporation\\_47695.html](https://www.sebi.gov.in/legal/circulars/sep-2020/recovery-of-assets-of-defaulter-member-and-recovery-of-funds-from-debit-balance-clients-of-defaulter-member-for-meeting-the-obligations-of-clients-stock-exchange-clearing-corporation_47695.html)

SEBI vide its Circular dated September 28,2020 has been decided that In the case of default by TM/CM, it has been noted that in certain cases there is shortfall of funds/securities with defaulter member to meet the obligation of clients/ SE / CC. The bye-laws of SE/CC provide for the procedure for declaring a member as defaulter when , amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.

The SE/CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients(to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law

# Reserve Bank of India (RBI)

## **1. EXCLUSION OF BANKS FROM THE SECOND SCHEDULE TO THE RESERVE BANK OF INDIA ACT, 1934 AND CESSATION AS BANKING COMPANY**

**Date of Notification: September 30, 2020**

**Effective Date: April 01, 2020**

**Link:** [RBI/2020-2021/47 DOR.No.Ret.BC.20/12.07.150/2020-21](#)

[RBI/2020-2021/46 DOR.No.Ret.BC.19/12.07.150/2020-21](#)

[RBI/2020-2021/45 DOR.No.Ret.BC.18/12.07.150/2020-21](#)

[RBI/2020-2021/44 DOR.No.Ret.BC.17/12.07.150/2020-21](#)

RBI vide its notification dated September 30, 2020 excluded the following banks from the Second Schedule to the Reserve Bank of India Act, 1934 with effect from April 01, 2020:

- i. Syndicate Bank
- ii. Oriental Bank of Commerce
- iii. Corporation Bank
- iv. Allahabad Bank

# Central Board of Excise and Customs (CBEC)



## **1. ALL INDIA ROLL-OUT OF FACELESS ASSESSMENT**

**Date of Circular : September 04, 2020**

**Effective Date :October 31, 2020**

**Link:**<https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-40-2020.pdf;jsessionid=1819254C2305CFA2C6C4284A7F760654>

CBIC vide its Circular dated September 04, 2020 has rolled out Faceless Assessment at an all India level in all ports of import and for all imported goods by 31.10.2020.

The key elements of the Turant Customs programme are Faceless, Contactless and Paperless Customs clearance processes.

The circular provides for Implementation Phases for All India Roll-Out of Faceless Assessment.

## **2. TIME LIMIT EXTENSION UPTO THE 31ST DAY OF OCTOBER, 2020**

**Date of Circular : September 21,2020**

**Effective Date: September 21,2020**

**Link: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-66-central-tax-english-2020.pdf>**

CBIC vide its Notification dated September 21, 2020 has amended the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020, namely

In the said notification, in the first paragraph, in clause (i), after the first proviso, the following proviso shall be inserted, namely: -

“Provided further that where, any time limit for completion or compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return, which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended upto the 31st day of October, 2020.”.

# Central Board of Direct Taxes (CBDT)

## **1. GUIDELINES FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING THE FINANCIAL YEAR 2020-21 AND CONDUCT OF ASSESSMENT PROCEEDINGS IN SUCH CASES**

**Date of Release :September 17, 2020**

**Effective from :September 17,2020**

**Above Release is available at the following link:**

**[https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/416/Guidelines\\_compulsory\\_selection\\_returns\\_Complete\\_Scrutiny\\_MiscComm\\_18\\_9\\_20.pdf](https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/416/Guidelines_compulsory_selection_returns_Complete_Scrutiny_MiscComm_18_9_20.pdf)**

The CBDT has issued Guidelines dated September 17, 2020 for compulsory selection of returns for Complete Scrutiny during the Financial Year 2020-21 and conduct of assessment proceedings in such cases. Keeping in view of the Faceless Assessment Scheme, 2020 implemented by the Department and the difficulties being faced amid COVID-19 pandemic, the parameters for compulsory selection of returns for Complete Scrutiny during Financial Year 2020-21 and conduct of assessment proceedings in such cases are prescribed. In the guidelines, the board has explained various conditions and parameters, on the basis of which cases will be selected for scrutiny. The CBDT has stated that the process of selection of returns for compulsory scrutiny based on the parameters issued will be completed by 30 September 2020.

The parameters mentioned by the board include survey, search, and Seager, cases in which notice has been issued under section 148, related to revocation of registration or approval of authorities under section 12A / 10 (23C) and Cases in which notice has been issued under Section 142 (1) are included.

# Miscellaneous Laws

## **1. GUIDELINES FOR APPOINTMENT OF INSOLVENCY PROFESSIONALS AS ADMINISTRATORS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (APPOINTMENT OF ADMINISTRATOR AND PROCEDURE FOR REFUNDING TO THE INVESTORS) REGULATIONS, 2018**

**Date of Release : September 05,2020**

**Effective Date : October 01, 2020**

**Link: <https://ibbi.gov.in/uploads/legalframework/1d05f0423806860621ad259e52ed40f2.pdf>**

IBBI on the September 05, 2020 released “Guidelines for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018”.

The guidelines provide that IBBI shall prepare a panel of Insolvency Professionals (IPs) and SEBI shall appoint under those regulations, an IP from that panel according to its requirement. The validity of each panel shall be 6 months and on the expiry of which, a new panel shall take its place

## **2. GUIDELINES ON USE OF CAVEATS, LIMITATIONS AND DISCLAIMERS BY THE REGISTERED VALUERS IN VALUATION REPORTS**

**Date of Release : September 01,2020**

**Effective Date : October 01,2020**

**[Link:https://www.ibbi.gov.in/uploads/legalframework/e5e1300db2dd6a8bebe289ba579a7c14.pdf](https://www.ibbi.gov.in/uploads/legalframework/e5e1300db2dd6a8bebe289ba579a7c14.pdf)**

IBBI vide its press release dated September 01,2020 issued guidelines on use of Caveats, Limitations and Disclaimers by the Registered Valuers in Valuation Reports. The objective of these guidelines is to provide guidance to Registered valuers in the use of Caveats, Limitations, and Disclaimers in the interest of credibility of the valuation reports.

These guidelines also provide an illustrative list of the Caveats, Limitations, and Disclaimers which shall not be used in a valuation report.

These Guidelines are divided into three sections:

1. The first section elaborates on the need for Caveats, Limitations, and Disclaimers in a valuation report.
2. The second section provides a guidance note on the use of Caveats, Limitations, and Disclaimers.
3. Third section provides an illustrative list of Caveats, Limitations, and Disclaimers for each asset class provided in the Rules.

### **3. THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (ANNUAL REPORT) AMENDMENT RULES, 2020**

**Date of Notification : September 10,2020**

**Effective Date : September 10, 2020**

**<https://ibbi.gov.in/uploads/legalframework/41e38e3aa3899eca305d79edf946b547.pdf>**

IBBI vide its notification dated September 10, 2020 has amended the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018. Through this amendment, revision has been made in the time Schedule for submission of annual report for audit leading to the issue of Audit Certificate by the Comptroller and Auditor General of India and for submission to the Ministry of Corporate Affairs for timely submission to the Parliament are listed below:-

- (i) Approved and authenticated annual accounts to be made available by the Insolvency and Bankruptcy Board of India to the concerned Audit Office and commencement of audit of annual accounts- 30th June;
- (ii) Issue of the final Separate Audit Report (SAR) in English with Audit Certificate to Insolvency and Bankruptcy Board of India-31st October;
- (iii) Submission of the annual report and audited accounts to the Ministry of Corporate Affairs for it to be laid on the Table of the Parliament- 31st December.



#### **4. REVIEW OF FOREIGN DIRECT INVESTMENT (FDI) POLICY IN DEFENCE SECTOR**

**Date of Press Note : September 17, 2020**

**Link: [https://dipp.gov.in/sites/default/files/pn4-2020\\_0.PDF](https://dipp.gov.in/sites/default/files/pn4-2020_0.PDF)**

The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry vide its Press Note dated September 17, 2020 regarding the Foreign Direct Investment (FDI) Policy in Defence Sector made following changes:

Particulars	Sector/Activity	% of Equity/ FDI Cap	Entry Route
Current provisions	5.2.6.1 Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic up to 49% Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded
Revise Provisions		100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded

FDI upto 74% shall be permitted only for the companies seeking new industrial license.

Foreign investment in the sector is subject to security clearance by Ministry of Home Affairs as per guidelines of the Ministry of Defence.

Investee company should be structured to be self sufficient in the areas of product design and development.

# Article 1

## INTERPRETATION OF STATUTE WITH ITS INTENTION

It is to be regretted that the subject of interpretation of law has not in modern times received that degree of attention which it deserves. The rules of Interpretation may well rank as an important branch of what is called the adjective law. The part of that these rules play in the administration of justice by no means less important than the rules of procedure or the rules of evidence. Primarily the Court of law have to deal with three things:

- (1) Law dealing with rights & liabilities;
- (2) Facts which establish such rights and liabilities in particular case, and
- (3) The machinery of administering the law and of ascertaining facts.

Leaving the last matter apart, as being rather of an incidental character, the main duty of the court is, to deal with the substantive law, with which they are supplied by the State, and with the facts, with which the parties propose to supply them. To assist them in respect of the latter duty, there is law of Evidence. To assist them as regards of the former duty, there are the rules of interpretation. Thus the rules of interpretation stand side by side with the rules of evidence.

When we talk about the subject of interpretation, one of the oldest rules comes in our mind called the “**Literal Rule of Interpretation**”. Under this rule of interpretation the Courts interpret the statutes in a literal and ordinary sense. The court interpret the words of the statute in a way that is used commonly by all. It is incumbent on the court to use the grammatical meaning. The statutes should be construed in such a manner as though there is no other meaning except the literal meaning.

No doubt, ordinarily the literal rule should be applied while interpreting a statute or statutory rule, but the literal rule is not always the only rule of interpretation of a provision in a statute, and in exceptional cases the literal rule can be departed from. Constitutional Bench of the Hon'ble Supreme Court in the case of **R.L. Arora Vs. State of Uttar Pradesh & Ors. (1964 AIR 1230)** has observed:

*“a literal interpretation is not always the only interpretation of a provision in a statute, and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made.”*

Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the Court. In this article the authors are discussing the importance and value of interpretation of statute with its intention also known popularly as “**Purposive Construction**”.

Francis Bennion in his Statutory Interpretation Second Edn., has defined, a purposive construction of an enactment is one which gives effect to the legislative purpose by-

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).

Purposive Construction is also defined our traditional rules of principal called “**Mimansa Rules of Interpretation**”.

It may be mentioned that the Mimansa Rules of Interpretation were created for resolving the practical difficulties in performing the Vedic yagyas. The rules for performing the various yagyas were given in books called Brahmanas e.g. Shatapath Brahman, Aitareya Brahman, Taitereya Brahman, etc. There were many ambiguities, conflicts, incongruities, ellipses etc. in the Brahmana texts, and hence principles of interpretation had to be created for this purpose. Thus the Mimansa principles were originally created for religious purposes, but they were so rational and logical that subsequently they began to be used in law, grammar, logic, philosophy etc., that is, they became of universal application.

**Jaimini in Sutra 6: 3: 9 states:**

When there is a conflict between the purpose and the material, the purpose is prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose.

To explain this it may be mentioned that the Brahmanas state that the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir Wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Mimansa principle (stated above) permits that the Yupa can be made of Khadar wood which is strong. Now this substitution is being made despite the fact that the prescribed wood is Khadir, but this prescription is only subordinate or accessory to the performance of the yagya, which is the main object. Hence, if it comes in the way of the yagya being performed, it can be modified or substituted.

In the Mimansa system, the literal rule of interpretation is called the Shruti (or Abhida) principle, and ordinarily it is this principle which is to be applied when interpreting a text. However, there are exceptional situations when we have to depart from the literal rule and then certain other principles have to be resorted to e.g. **(1)** the Linga (also called Lakshana) principle or the suggestive power of words or expressions, **(2)** the Vakya principle or syntactical arrangement, **(3)** the Prakarana principle, which permits construction by referring to other texts in order to make the meaning clear, **(4)** the Sthana (position) principle which means the relative position of one text with reference to another, **(5)** the Samakhya (name) principle which means the connection between different passages by the indication accorded by the derivative words of a compound name.

Maxwell in his book of “Interpretation of Statute” has stated:

That a thing which is within the letter of a statute is not within the statute unless it be also within the real intention of the Legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony within that intention. Language is rarely so free from ambiguity as to be incapable of being used in more than one sense; and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many.

Thus, in both systems of interpretation, the Mimansa system as well as Maxwell's system, it is emphasized that the intention of a statute has often to be seen to properly interpret it, and it is not that the Court can never depart from the literal rule of interpretation. It all depends on the context, the subject-matter, the purpose for which the provision was made, etc.

Our courts has many time used the Purposive Construction to interpret the statute, for example in the case titled “**Surjit Sing Vs. Mahanagar Telephone Nigam Ltd.**” decided on **21.04.2008**, the Hon’ble Supreme Court had used the purposive construction to interpret the Rule 443 of Indian Telegraph Rules, 1951 and held “**Telephone lines in the name of the person can be disconnected for non-payment of the dues in connection with the line in the name of his dependent.**”

# Article 2

**RELEVANT PROVISIONS OF COMPANY ( AMENDMENT ) BILL 2020**

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
1	117	Resolution and agreement to be filed	<p>(i) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>"(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.";</p>	<p><b>Amount of penalty is reduced for Company :</b>  <b>Min- 100,000</b>  <b>on continue default : 500 Hundred rupees per day</b>  <b>Max - 25,00,000</b></p> <p><b>Amount of penalty is reduced for officer in default :</b>  <b>Min- 50,000</b>  <b>on continue default : 500 Hundred rupees per day</b>  <b>Max - 500,000</b></p>	<p><b>Amount of penalty is reduced for Company :</b>  <b>Min- 10,000</b>  <b>on continue default : 100 Hundred rupees per day</b>  <b>Max - 2,00,000</b></p> <p><b>Amount of penalty is reduced for officer in default :</b>  <b>Min- 10,000</b>  <b>on continue default : 100 Hundred rupees per day</b>  <b>Max - 50,000</b></p>
			<p>(ii) in sub-section (3), in clause (g), for the second proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—</p> <p align="center">(a) a banking company;                      (b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as</p>	<p><b>Exemption was provided only to the Banking Company</b></p>	<p><b>Now the exemption is available for Banking company , NBFC companies , HFC companies.</b></p>



S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
2	129A	Periodical Financial Results	<p>A. The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—</p> <p>(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;</p> <p>(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and</p> <p>(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.".</p>	new section added	Now such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.
3	149	Company to have Board of Directors	<p>New proviso added to Section 149 (9) - "Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V." Earlier, Independent Directors were entitled to only sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.</p>	Only executive Directors were entitled to remuneration.	Non-executive directors of a Company having no profits or inadequate profits, may get remuneration, exclusive of the sitting fee, in accordance with the provisions of Schedule V of the Companies Act, 2013

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
4	135	Corporate Social responsibility	<p>(a) in sub-section (5), after the second proviso, the following proviso shall be inserted, namely:—</p> <p>"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.";</p>	<p>Companies falling under the CSR bracket, were required to ensure that, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. There was no provision for set off of extra amount spent by the company in the preceding year.</p>	<p>if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this section for such number of succeeding financial years and in such manner, as may be prescribed.</p>
			<p>(b) for sub-section (7), the following sub-section shall be substituted, namely:—</p> <p>"(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh</p>	<p>If a company fails to spend the required amount on CSR or fails to transfer the said amount to the Unspent Corporate Social Responsibility Account, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p>	<p>As per the amendment, the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less</p>

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
4	135	Corporate Social responsibility	<p>(c) after sub-section (8), the following sub-section shall be inserted, namely:—</p> <p>"(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company."</p>	New sub-section added	No Requirement to constitute a CSR committee in case amount to be spent is less than fifty lakh.
5	165	Number of Directorship	<p>In section 165, for sub-section (6), the following sub-section shall be substituted, namely:—</p> <p>"(6) If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees."</p>	before the Company (Amendment) Bill 2020 amount of penalty was five thousand for each day and no maximum limit was prescribed.	now penalty amount is reduced from 5000 to 2000 and Maximum amount of penalty is 2 lakh rupees.
6	167	Vacation of Office of Director	Section 167(2) provides for the penalties If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified under Section 167	Such person shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both	Such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
7	184	Disclosure of Interest by Director	<p>184(1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.</p> <p>184(2)-Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—</p> <p>(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or</p> <p>(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,</p> <p>shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:</p> <p>Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or</p>	<p>If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both.</p>	<p>If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be liable to a penalty of one lakh rupees.</p>

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
8	188	Related Party Transactions	<p>Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—</p> <p>(a) sale, purchase or supply of any goods or materials;</p> <p>(b) selling or otherwise disposing of, or buying, property of any kind;</p> <p>(c) leasing of property of any kind;</p> <p>(d) availing or rendering of any services;</p> <p>(e) appointment of any agent for purchase or sale of goods, materials, services or property;</p> <p>(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</p> <p>(g) underwriting the subscription of any securities or derivatives thereof, of the company:.....</p>	<p>Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—</p> <p>(i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and</p> <p>(ii) In case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.</p>	<p>Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—</p> <p>(i) in case of listed company, be liable to a penalty of twenty-five lakh rupees; and</p> <p>(ii) In case of any other company, be liable to a penalty of five lakh rupees</p>

S.No	Section	Heading	Particulars	Prior to amendment	Post Amendment
9	197	Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits	In section 197 deals with the overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits - The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the .....	Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V	Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or <b>any other non-executive director, including an independent director</b> , by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V
10	204	Secretarial Audit for Bigger Companies	Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.....	If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the comapny or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees	If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the comapny or the company secretary in practice, who is in default, shall be liable to a penalty of two lakh rupees

# Article 3

## FINANCE ACT 2020 HAS INTRODUCED SUB CLAUSE (1H) IN SEC 206C TO PROVIDE TCS APPLICABILITY W.E.F. 1<sup>ST</sup> OCTOBER, 2020

Every **person being a seller**, who receives any amount as consideration for **sale of any goods** of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or (1G) shall, **at the time of receipt** of such amount, **collect** from the buyer, a sum equal to **0.075%** upto **31<sup>st</sup> March 2021** (0.1% from 1<sup>st</sup> April 2021 onwards) of the sale consideration exceeding fifty lakh rupees

It is further provided **that in case the buyer does not furnish his PAN** number to the seller, then tax shall be collected by the seller at the **rate of 1%**.

Further, the provision of this sub-section shall not apply if the buyer is liable to deduct tax at source under any other provision of the Act or seller is liable to collect TCS under sub section (1) or (1F) or (1G) of section 206C of Income Tax Act i.e. TCS shall not be applicable in the following cases: –

- Where the turnover of the Seller is less than 10 crore in the preceding Financial Year.
- Where the goods are exported out of India.
- Where the buyer is the Central Government, State Government, Embassy, High Commission, legation, or trade representation of a foreign state.
- Where the buyer is a local authority as per Explanation to Section 10(20) IT Act.

Thus, for the purpose of **TCS compliance on account of section 206C(1H)**, please note the following changes:

1. Assessee will charge applicable amount of TCS on collection against the supply of goods with effect from 1<sup>st</sup> October 2020.
2. **TCS will be charged on total invoice value.** TCS amount will be rounded off to 2 decimals.



3. Since point of taxation is on **Receipt of consideration**, TCS will be applicable on all collections received from 1st October 2020 including collection against invoices raised prior to 1<sup>st</sup> October 2020. Accordingly, assessee must ensure to get payment of Invoices along with applicable TCS value.

4. In case of **advance payment made on/after 1<sup>st</sup> October 2020**, must ensure from Customer to add applicable TCS amount to the advance amount while making payment. It may be noted that all advance amount received on/after 1<sup>st</sup> October 2020 will be treated as inclusive of TCS.

Kindly take note this new statutory requirement applicable with **effect from 1st October'2020**.

## **Illustration**

### **Context**

Mr. A is the seller and Mr. B is the buyer. They conduct business on regular basis. Mr. A gross receipts or turnover from the business carried on by him exceeds ten crore rupees during FY 2019-20.

### **Transaction 1: Sold and Received prior to 1 Oct 2020**

- No TCS will be collected by seller as the said provision is applicable from 1st October, 2020

### **Transaction 2: Sold and Received after 1 Oct 2020**

- Aggregate value of total sales of Mr. A to Mr. B is ₹1.35 Crores (70 lakhs + 65 lakhs), exceeding the ₹50 lakhs in the FY 2020-21

- Mr. A will be liable to collect TCS on ₹85 lakhs @ 0.075% when Mr. A receives the sales consideration i.e. on 25 October 2020
- If Mr. B does not provide his Permanent Account Number or Aadhaar number to the seller, then the applicable rate of TCS will be collected @ 1% of ₹85 lakhs

# Compliance Checklist

## Compliance Calendar for October 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

### Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of September, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan\*
- Due date for deposit of TDS for the period July 2020 to September 2020 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
- Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M in the month of August, 2020\*
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2020 has been paid without the production of a challan\*
- Quarterly statement of TCS deposited for the quarter ending September 30, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of September, 2020\*
- Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2020
- Quarterly statement of TDS deposited for the quarter ending September 30, 2020\*

### FEMA Related Compliances

- Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA
- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the month of July

### RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
- Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

### Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))
- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the month of July

### GST Related Compliance

- GSTR 1(Monthly) for August
- GSTR 3B for August 2020
- GSTR 4 for FY 2019-20
- GSTR 1 (Quarterly) for July to Sep

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